Supreme Court, U. S.
FILED
APR 9 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

No. 79-1583

NATIONAL COTTON COUNCIL OF AMERICA,
Petitioner,

v.

RAY MARSHALL, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Respondent.

Petition for a Writ of Certiorari to the United States [redacted] Court of Appeals for the District of Columbia Circuit

CHARLES M. CRUMP
APPERSON, CRUMP, DUZANE & MAXWELL
2610 - 100 North Main Building
Memphis, TN 38103
901/525-1711

JOSEPH A. MOSS
4123 27th Street, N.
Arlington, VA 22207
703/525-4063

Attorneys for Petitioner,
National Cotton
Council of America

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes and Regulations Involved	3
Statement of the Case	4
I. The American Cotton Industry and the National Cotton Council of America	4
II. Factual Background	5
III. The Standard's Cost and Economic Feasibility	8
a. The Standard's Costs at the Farm Level	8
b. The Question of Economic Feasibility	10
c. Costs versus Benefits	11
Reasons For Granting The Petition	13
1. The decision of the District of Columbia Circuit with regard to the showing required by OSHA to establish the economic feasibility of its standards is in square conflict with the decisions of the Fifth, Sixth and Seventh Circuits	13

2. There is a conflict between the District of Columbia Circuit and the Fifth Circuit as to whether OSHA must demonstrate that the expected benefits of its standards bear a reasonable relationship to the costs of achieving them 13

Conclusion 14

Certificate of Service 15

Appendix A-1

TABLE OF AUTHORITIES

Cases

AFL-CIO v. Marshall, No. 78-1562 (D.C. Cir. 1979)... Passim

American Petroleum Institute v. OSHA, 581 F.2d 493 (5th Cir. 1978) cert. granted sub nom, Marshall v. American Petroleum Institute, 440 U.S. 906 (1979) 7,12

Statutory Provisions

28 U.S.C. §1254(1)..... 2

Occupational Safety and Health Act, 29 U.S.C. §§651 et seq 3

29 U.S.C. §652(8) 3

29 U.S.C. §655(b)(5)..... 3

29 U.S.C. §660(a) 2

Regulations

29 C.F.R. §1910.1043 3,4

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

No.

NATIONAL COTTON COUNCIL OF AMERICA,
Petitioner,

v.

RAY MARSHALL, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Respondent.

Petition for a Writ of Certiorari to the United States [redacted] Court of Appeals for the District of Columbia Circuit

Petitioner, National Cotton Council of America (NCC), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit[1] entered in this case on October 24, 1979.

[1] The United States Court of Appeals for the District of Columbia Circuit is hereafter referred to as the Court of Appeals or the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals has not been reported.[2] The Occupational Safety and Health Standard governing Occupational Exposure to Cotton Dust[3] and the Statement of Reasons of the Secretary of Labor issued with the Standard are reported at 43 Fed. Reg. 27350-99 (June 19, 1978), as amended at 43 Fed. Reg. 28473-74 (June 30, 1978), and 35032-35 (August 8, 1978), and 43 Fed. Reg. 56892-94 (December 5, 1978).

JURISDICTION

The Court of Appeals' judgment was entered on October 24, 1979.[4] On November 7, 1979, NCC and other industry petitioners filed petitions for rehearing and suggested rehearing *en banc*. By orders dated January 11, 1980, all petitions for rehearing and suggestions for rehearing *en banc* was denied.[5] The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and 29 U.S.C. § 660(a).

---

[2] See Slip Opinion, at pp. 19-102 in a separate Appendix accompanying the Petition for a Writ of Certiorari filed March 14, 1980 by the Textile Petitioners — i.e., American Textile Manufacturers Institute, Inc. (ATMI), Milliken and Company, Arkwright Mills, Spartan Mills, Blair Mills, Inc., Hermitage, Inc., Dan River, Inc., Cone Mills Corporation, Mayfair Mills, Springs Mills, Inc., Reigel Textile Corporation, Fieldcrest Mills, Inc., and West Point-Pepperell, Inc. Hereafter references to the textile industry's petition and its accompanying appendix will be referred to as "ATMI's Petition" and "ATMI's Appendix".

[3] ATMI's Appendix, pp. 1-18.

[4] ATMI's Appendix, pp. 19-102.

[5] ATMI's Appendix, pp. 103 and 104.

QUESTIONS PRESENTED

The Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, *et seq.*) delegates to the Secretary of Labor the power to adopt standards which are reasonably necessary to ensure safe and healthful workplaces. But the Secretary may not promulgate a standard unless it is reasonably necessary or appropriate to provide safe or healthful employment and places of employment (29 U.S.C. § 652(8)), unless it is directed toward control of a material impairment of health or functional capacity, unless it is based on the best available evidence and unless it is both technologically and *economically* feasible (29 U.S.C. § 655(b)(5)).

NCC presents these questions:[6]

1. Does substantial evidence in the record as a whole support OSHA's determination that the Occupational Safety and Health Standard promulgated as 29 C.F.R. § 1910.1043 (the "Standard") is economically feasible?

2. Does the Occupational Safety and Health Act require OSHA to demonstrate that a standard is reasonably necessary and that its benefits bear a reasonable relationship to its costs?

STATUTES AND REGULATIONS INVOLVED

Section 6(b)(5) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 655(b)(5) provides:

> (5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, *to the extent feasible,* on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such

---

[6] NCC adopts by reference the additional questions presented by the Textile Petitioners (see ATMI's Petition, pp. 2 and 3).

> employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, *the feasibility of the standards,* and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired. (emphasis added)

The regulation involved is the Occupational Safety and Health Standard for Occupational Exposure to Cotton Dust, 29 C.F.R. § 1910.1043 (1978).[7]

STATEMENT OF CASE

I. The American Cotton Industry and the National Cotton Council of America

The record below establishes the significant economic and social values of the American cotton industry to the nation: cotton provides about $3.8 billion in farm income to growers in an 18-state region; more than $11 billion is invested in land and equipment to grow cotton, and billions more are invested in cotton gins, cottonseed oil mills, warehouses, compresses, raw cotton merchandising operations, which involve classing offices and textile mills; cotton is the highest value crop grown in the Cotton Belt states and ranks fourth in the entire U.S.; cotton accounts for more than $1 billion annually in exports. Cotton is a renewable resource which requires less energy per pound to

---

[7] ATMI's Appendix, pp. 1-18.

produce than man-made fibers which are manufactured from petro-chemicals.[8]

Approximately 70 percent of the volume of cotton, cottonseed and its products are grown, handled or processed by dues-paying members of NCC.

The National Cotton Council of America is a not-for-profit corporation organized and existing under the laws of the State of Tennessee with its principal office at Memphis, Tennessee. It was chartered February 7, 1939, for the purpose of increasing throughout the world the consumption of cotton, cottonseed and the products thereof produced in the United States of America, and by so doing, to improve the economic and social status and the welfare of the people of the United States engaged in various aspects of the cotton industry, including producers, ginners, warehousemen and compressmen, merchants, cottonseed crushers and textile manufacturers.

The Standard in question covers every sector of the cotton handling and processing industry except farming and ginning[9] and, therefore, directly affects five of NCC's seven member sectors. However, the Standard, if permitted to remain in effect, will have severe economic impact on the *entire* cotton industry.

II. Factual Background

The Standard was published June 19, 1978 to be effective September 4, 1978. On August 15, 1978, NCC filed a petition for review of the Standard in the United States Court of Appeals for the Sixth Circuit. Petitions were also filed in the Fourth, Fifth, Seventh, Ninth and District of Columbia Circuits

---

[8] OSHA Exhibit 65, Testimony of G. C. Cortright. (Pertinent excerpts are appended as Exhibit A.)

[9] The ginning industry is covered by a separate standard which is under review in the United States Court of Appeals for the Fifth Circuit.

by other industry organizations and individual companies as well as by the American Federation of Labor, Congress of Industrial Organizations and other labor organizations. Subsequently, all cases were consolidated in the District of Columbia Circuit. On October 20, 1978, the Court of Appeals issued an Order staying the Standard pending judicial review or further Order of that Court. By Order dated November 1, 1978, three *principal* briefs[10] were authorized. Additionally, two *supplemental* briefs were authorized, one of which would be filed by the National Cotton Council and would be addressed to the economic impact and feasibility of the Standard.

Pursuant to the authority granted in the aforementioned Order, NCC filed a supplemental brief on December 15, 1978, which set forth the Standard's industrywide economic impact—i.e., the aggregate impact taking into account the Standard's direct consequences for the industry sectors covered, together with the indirect consequences for sectors not covered.[11]

On October 24, 1979, the Court of Appeals affirmed the Standard except as it relates to the cottonseed oil mills. That part of the Standard was remanded to OSHA for "reconsideration or clarification by the agency."[12]

---

[10] A brief by the Unions, AFL/CIO, et al, a brief by the Textile Petitioners (ATMI, et al), and a joint brief by the "Non-Textile Petitioners" (the Cottonseed Oil Mills, the Warehouses and the Shippers).

[11] The Principal Briefs set forth the costs and economic consequences of the Standard for the individual industry sectors covered by the Standard. However, the Standard's total *impact* extends beyond the sectors covered and NCC's supplemental brief was filed to acquaint the Court of Appeals with the Standard's total *industrywide* impact.

[12] ATMI's Appendix, p. 102. On January 11, 1980, the Court issued another order amending judgment. The remand language was changed as follows: "The record is remanded for *supplementation* and clarification . . . ." (emphasis added)

On November 7, 1979, NCC petitioned the District of Columbia Circuit for rehearing and suggested rehearing *en banc.*

Pursuant to the invitation to show cause why the stay should not be lifted, NCC and other petitioners moved the Court of Appeals to continue the stay for a minimum of ten days after final disposition of the Petitions for Rehearing and Suggestions for Rehearing *en banc*[13] or for a minimum of ten days after the Supreme Court's decision in API,[14] whichever occurs later.

On January 11, 1980, all Petitions for Rehearing and Suggestions for Rehearing *en banc* were denied.[15]

Thereafter, NCC and other petitioners moved the Court of Appeals to Stay the Mandate pending the Supreme Court's consideration and final disposition of Petitions for Writs of Certiorari which NCC and other industry petitioners would file.

By Order of January 22, 1980, all motions to stay the mandate were denied and the Clerk was directed to issue the Mandate forthwith for all cases except for appeal No. 78-2014.[16]

In keeping with its role as a supplemental petitioner, the economic issues set forth by NCC in this petition are *supplemental* in nature. Accordingly, numerous references will be made to ATMI's Petition where the principal economic issues are addressed in more detail.

---

[13] Petitions for rehearing and motions or a continuance of the stay were also filed by the ATMI, et al, the Cotton Warehouse Association of America and the American Cotton Shippers Association.

[14] *American Petroleum Institute* v. *OSHA,* 581 F.2d 493 (5th Cir. 1978), *cert. granted sub nom, Marshall* v. *American Petroleum Institute,* 440 U.S. 906 (1979).

[15] ATMI's Appendix, pp. 103 and 104.

[16] ATMI's Appendix, pp. 106 and 107. No. 78-2014 is the Appeal by the cottonseed oil mill industry.

III. The Standard's Cost and Economic Feasibility

A critical element in the economic feasibility question is the magnitude of the Standard's cost—i.e., will compliance with the Standard cost the cotton textile industry just over a half billion dollars as OSHA claims—and as accepted by the District of Columbia Circuit—or will it cost five times that much as evidenced by any fair assessment of the record?

The Textile Petitioners[17] have shown how OSHA mishandled the record in putting the Standard's compliance costs at $550 million; how the Court of Appeals chose to disregard the economic evidence of the record in favor of the post hoc rationalizations of OSHA's attorneys; how the Standard's real costs (some five times greater than OSHA claims) are economically infeasible (a conclusion OSHA does not, and cannot, deny); and how the Court of Appeals misapplied the substantial evidence test, leading to its strained and unsupported findings on feasibility. To avoid duplication, NCC will not restate the details which led to the gross understatement of the Standard's compliance costs for the textile sector but will document the Standard's additional cost for the farming sector as evidenced by the record but ignored by OSHA and the Court of Appeals.

a. The Standard's Costs at the Farm Level

Although cotton farmers are exempt from the Standard's *coverage,* they cannot be exempted from its extremely adverse *consequences* on their markets.

Research Triangle Institute (RTI)—OSHA's contractor for the Agency's economic feasibility study—assessed the impact of a *proposed* standard with compliance costs totaling $2,695,500.00. Since the *Final* Standard's estimated compliance

---

[17] The Textile Petitioners have fairly summarized the economic consequences of imposing the Standard on the cotton textile industry. (See ATMI's Petition, pp. 7-13.)

costs are of the same magnitude, RTI's economic impact findings are relevant in the instant case. Regarding the estimated compliance cost of $2,695,500.00, RTI's study concluded that such an expenditure would add 21¢/pound to the price of cotton yarn[18] and would result in a reduction of 150,303,000 pounds (313,000 bales) in raw cotton consumption by U. S. mills.[19] At 1976 prices,[20] this displacement of cotton would represent an *annual* revenue loss to American cotton farmers of more than $100,000,000.[21]

In its Supplemental Brief filed in the Court of Appeals, NCC noted the Standard's very substantial cost implications for American cotton farmers. But OSHA, in its rule-making, disregarded the Standard's consequences at the farm level and did not include farm-level costs in its brief filed in the Court of Appeals. The result was an understatement of the industrywide cost of compliance. Moreover, the Court of Appeals' refusal to assess meaningfully the record as a whole resulted in its failure to consider the farm-level cost and impact of the Standard, which further[22] contributed to the Court's misperception of the Standard's economic feasibility.

Nowhere in OSHA's or the Court of Appeals' deliberations on economic feasibility was the more than $100,000,000 loss to cotton farmers considered, even though it would be a direct *an-*

---

[18] OHSA Exhibit 6, No. 76, page VI-90, Table VI-23. (Appended as Exhibit B.)

[19] *Id.*, page VI-106, Table VI-31. (Appended as Exhibit C.)

[20] In 1976, when RTI's study was completed, the average price of base grade cotton (grade 41, staple 34) was 67.7¢/pound — 150,303,000 x 67.7¢ = $101,755,130.

[21] While this loss of volume is significant, NCC demonstrated in its testimony and in its pleadings in the Court of Appeals that RTI's 150,303,000 pound estimate substantially understated the probable loss the Standard would inflict on cotton farmers.

[22] OHSA's misrepresentation, and the Court of Appeals' apparent misunderstanding, of direct compliance costs in the textile sector have already been noted in this Petition and in ATMI's Petition, pp. 7-13.

nual loss with *no* corresponding benefits. The total disregard of these costs by OSHA and failure of the Court of Appeals to consider the record *as a whole* deprived Petitioner of a proper judicial review.[23]

b. **The Question of Economic Feasibility**

Every serious evaluation of the consequences of a standard costing more than $2.5 billion found that the economic impact on the American cotton industry would be severe. OSHA's own contractor, RTI, said:

> . . . unless the compliance capital investments are spread over a substantial number of years, *all* the companies engaged heavily in cotton yarn spinning and weaving processes will face severe difficulty in financing capital costs . . .[24] (emphasis added)

Dr. David LeSourd, project leader in RTI's study further stated that compliance would take as much as *eight* years or more for the opening through slashing operations in textile mills alone.[25] But in promulgating the Final Standard, OSHA went against the warning of its contractor by *shortening* the compliance period and requiring installation to be completed in *four* years.

The Small Business Administration reviewed OSHA's proposed standard for which compliance costs were estimated to be $2,695,000,000 and concluded that it was not feasible for small businesses:

---

[23] Also, the Textile Petitions show how the Court of Appeals misapprehended or grossly misapplied the substantial evidence test by accepting at fact value OHSA's erroneous estimates of costs in the textile sector, thus depriving the Textile Petitioners of their right to appropriate judicial review (see ATMI's Petition, pp. 10 and 11).

[24] OSHA Exhibit 6, No. 76, page VI-127. (Appended as Exhibit D.)

[25] Transcript, page 562. (Appended as Exhibit E.)

> . . . the OSHA regulations adopted will protect workers from cotton dust by shutting down the plants in which they are now employed.[26]

The Council on Wage and Price Stability also reviewed OSHA's proposed standard and concluded that its costs were excessive and inflationary.[27]

Even though the record established that there was an equally effective, but far less costly, alternative, OSHA promulgated its Standard, claiming it was economically feasible solely because it would not put the entire industry out of business. Adopting OSHA's strained definition of economic feasibility without examining the evidence in the record, the Court of Appeals sustained the Agency's feasibility determination.[28]

The decision of the Court of Appeals confers upon OSHA unlimited discretionary power in its economic feasibility determinations. If allowed to stand, the decision will enable OSHA to promulgate *any* standard, even with devastating consequences for industry. OSHA would only have to show that the standard's costs would not shut the doors of *every* firm in the entire industry.

c. Costs versus Benefits

In its Supplemental Brief, NCC argued that OSHA is required to weigh the expected benefits of its standards against the costs of compliance. OSHA denies any obligation to balance

---

[26] OSHA Addendum #2: Policy Considerations on Small Business Impact of Proposed Regulations for Cotton Dust, p. 12. (Appended as Exhibit F.)

[27] OSHA Exhibit 111: Comments of the Council on Wage and Price Stability, p. 37. (Appended as Exhibit G.)

[28] Slip Opinion, pp. 49-51 (ATMI's Appendix, pp. 67 and 68). See ATMI's Petition, pp. 9-13.

costs and benefits and the District of Columbia Circuit has sustained that position in direct opposition to the Fifth Circuit's ruling in API.[29]

To hold as the District of Columbia Circuit did is to conclude that *any* expenditure is feasible—regardless of its devastating consequences for industry—so long as the expenditure results in *any* improvement in health and safety conditions—regardless of how marginal.

---

[29] *American Petroleum Institute* v. *OHSA*, supra.

REASONS FOR GRANTING THE PETITION

In keeping with its role as a supplemental petitioner solely on matters of economic cost and impact, NCC confines its statement of reasons for granting the writ to two issues related to the Standard's economic feasibility:

1. The decision of the District of Columbia Circuit with regard to the showing required by OSHA to establish the economic feasibility of its standards is in square conflict with the decisions of the Fifth, Sixth and Seventh Circuits.

2. There is a conflict between the District of Columbia Circuit and the Fifth Circuit as to whether OSHA must demonstrate that the expected benefits of its standards bear a reasonable relationship to the costs of achieving them.

To avoid duplication, NCC foregoes a more complete statement of reasons why the Petition should be granted and invites the Court's attention to the ATMI Petition for the authorities supporting the two reasons stated above.[30]

NCC respectfully suggests to this Honorable Court that an authoritative ruling is urgently needed to resolve conflicts among the Circuits on these critically important questions of the legal dimensions of delegated regulatory power.

---

[30] NCC incorporates by reference the reasons and authorities cited in the ATMI's Petition, pp. 14-20.

CONCLUSION

For the reasons stated and incorporated by reference, the petition for a writ of certiorari should be granted.

Respectfully submitted,

NATIONAL COTTON
COUNCIL OF AMERICA
By: Charles M. Crump

Charles M. Crump
APPERSON, CRUMP,
DUZANE & MAXWELL
2610 - 100 North Main
Building
Memphis, TN 38103
901/525-1711

Joseph A. Moss
4143 27th Street, N.
Arlington, VA 22207
703/525-4063

Attorneys for Petitioner,
National Cotton Council of
America

CERTIFICATE OF SERVICE

I hereby certify that copies of the Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit on behalf of National Cotton Council of America were served on this 9th day of April, 1980, on the following counsel of record by first class mail, postage prepaid, or by personal delivery to their offices:

Allen H. Feldman, Esq.
John A. Bryson, Esq.
Office of the Solicitor
Department of Labor
Washington, D.C. 20210

Carl W. Vogt, Esq.
Fulbright & Jaworski
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

J. Albert Woll, Esq.
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Gregory B. Tobin, Esq.
Ogletree, Deakins, Smoak
& Stewart
2920 1st Nat'l Bank Tower
Atlanta, GA 30303

Neil J. King, Esq.
Wilmer, Cutler & Pickering
1666 "K" Street, N.W.
Washington, D.C. 20006

Neal P. Gillen, Esq.
American Cotton Shippers
Assn.
1707 "L" Street, N.W.
Washington, D.C. 20036

George H. Cohen, Esq.
Bredhoff, Gottesman, Cohen
& Weinberg
100 Connecticut Ave.
Washington, D.C. 20036

Arthur M. Goldberg, Esq.
15 Union Square
New York, NY 10003

Robert E. Payne, Esq
McGuire, Woods & Battle
1400 Ross Building
Richmond, VA 23219

Robert T. Thompson, Esq.
Thompson, Mann & Hutson
The Daniel Building
Greenville, SC 29602

Allen A. Lauterbach
C. David Mayfield, Esq.
American Farm Bureau
Federation
225 Touhy Ave.
Park Ridge, IL 60068

Charles M. Crump

APPENDIX

APPENDIX

EXHIBIT	FOOTNOTE	
A	8	OSHA Exhibit 65, Testimony of G.C. Cortright.
B	18	OSHA Exhibit 6, No. 76, page VI-90, Table VI-23.
C	19	OSHA Exhibit 6, No. 76, page VI-106, Table VI-31.
D	24	OSHA Exhibit 6, No. 76, page VI-127.
E	25	Transcript, page 562.
F	26	OSHA Addendum #2: Policy Considerations on Small Business Impact of Proposed Regulations for Cotton Dust, p. 12.
G	27	OSHA Exhibit 111: Comments of the Council on Wage and Price Stability, p. 37.

EXHIBIT A
Excerpts of Testimony of
G. C. Cortright, Jr., Chairman
Industrywide Byssinosis Committee
at the
Public Hearing on OSHA's Proposed Cotton Dust Standard

My name is G. C. Cortright, Jr. I am a cotton producer from Rolling Fork, Mississippi, and a past president of the National Cotton Council. I have served as chairman of the Industrywide Byssinosis Committee since it was created in 1972, and my appearance here today is in that capacity.

The Industrywide Byssinosis Committee is composed of representatives from the National Cotton Council, which represents all seven segments of the industry—producers, ginners, warehousemen, merchants, crushers, cooperatives, and manufacturers—from the American Textile Manufacturers Institute, which represents the textile mills, and from Cotton Incorporated, which is the cotton industry's research and promotion arm.

The committee was created to serve as a high-level coordinating body to deal with the cotton dust problem. This problem has had—and continues to have—a Number One priority with the cotton industry.

The committee thus is the mechanism through which the industry is working to solve the byssinosis problem.

The efforts embrace many aspects—encouraging and stimulating the full range of needed research directed toward the isolation, identification, and elimination of any factors in cotton dust responsible for byssinosis; helping to define research needs and priorities; liaison with appropriate government agencies; creating close cooperation between Cotton Incorporated, ATMI, and the National Cotton Council; compilation of need-

ed facts and information; and coordination of these efforts with private sector work and other agencies.

One single objective lies behind every one of these activities—and that is to bring about a reasonable and workable solution to the problem for all concerned.

And right here I want to emphasize that the cotton industry certainly is not against any standard in any area where definite need and justification have been soundly demonstrated. Any contrary position would make no sense at all, not only in the national interst, but also in the interest of thousands of people who depend upon cotton for their livelihood.

Cotton people also understand and appreciate the vital concern our nation must have for employee safety. Such concern-makes sense to me as a businessman and it makes sense to me as a citizen.

At the same time, cotton people—and I believe all citizens—have a logical interest in, and concern for, the survival of their businesses and the security of their jobs.

The cotton industry cannot live with standards when the costs of those standards exceed the benefits that may, or may not, be derived from their imposition. Nor can we be expected to support standards which cannot be met because technology for meeting those standards is inadequate or simply not available.

We have carefully examined the cotton dust hazard but have been unable to find any valid evidence to justify the proposed standard which, if adopted, would essentially destroy the American cotton industry. When the enormous benefits of cotton are weighed against the minor risks from cotton dust, it clearly seems premature to saddle the industry with an insurmountable cost burden of a standard that is highly questionable in terms of need. In our view, the cause of byssinosis and its prevalence in the various work areas must be accurately determined through research before serious consideration is given to

changing the present standard. As I and other witnesses will detail later, such a research program is under way and growing rapidly.

But first let me describe briefly some of the significant economic and social values for the nation that are supplied by the cotton industry:

* Cotton provides about $3.8 billion in farm income to growers in an 18-state region stretching cross the lower half of the country from the Carolinas to California.

* More than $11 billion is invested in land and equipment to grow cotton, with billions more tied up in gins, oil mills, warehouses, and textile plants.

* Cotton is the highest value crop grown in the Cotton Belt states and ranks fourth in the entire U.S.

* Over 4 million Americans live wholly or partly on incomes from cotton, with 15 million more in related industries.

* Cotton supplies consumers with 38% of their clothing and 24% of the textile products in home furnishings. It also provides 23% of the fibers in industrial uses. The competition which cotton brings to the fiber market results in better products for the consumer at lower prices.

* Cotton is a renewable resource, and its production requires much less energy per pound than man-made fibers which come mostly from petro-chemicals. The living plant that produces cotton also helps purify the air by releasing fresh oxygen and using carbon dioxide waste.

* Cotton is a high-valued export item, bringing in over a billion dollars annually to help pay for oil and other needed imports.

* Cottonseed is a very important source of animal feeds, industrial products, and fats, oils, and proteins for human food.

Keeping these economic and social benefits for consumers and the nation is a continuing struggle for cotton because of intense competition in the fiber markets of the world. And our production and processing costs are crucial factors. Anything that adds to these costs hurts our ability to stay in business. As we will document in the course of these hearings, the adoption of the proposed standard will increase cotton's costs tremendously.

EXHIBIT B

Excerpts From

Table VI-23
Page VI-90

Price Increases of Cotton Yarn due to Exposure Limits on Ginning, Yarn Spinning and Yarn Processing ($ Per Pound of Cotton Yarn Processed).

SIC	Exposure Limit (mg/m^3)	Price Increase Required due to Exposure Limit on Ginning, Yarn Spinning and Yarn Processing ($ per pound of Cotton Yarn processed)
2211	0.2	.2122

EXHIBIT C

Table VI-31.
Change in Raw Cotton Demand Due to Interfiber Substitution.

(Page VI-106)

End-Use Group	Cotton Consumption (10^6 lbs.), 1972[a]	Elasticity of Substitution[b]	Decline in Cotton Demand Due to Interfiber Substitution (10^6 lbs), 1972[c]		
			0.5 mg/m^3	0.2 mg/m^3	0.1 mg/m^3
Men's Apparel	1117.9	-0.09	1.942	18.150	48.052
Women's and Girls' Apparel	602.4	-0.18	2.093	19.561	51.787
Home Furnishings	1356.5	-0.20	5.236	48.943	129.573
Industrial Uses	578.4	-0.61	6.810	63.649	168.509
TOTAL	3655.2		16.081	150.303	397.921

Source: [a] NACC, "Cotton Counts Its Customers, 1975" [9].

[b] USDA Inter-Fiber Study (1974) [12].

[c] Computer by RTI using the estimated price increase from Table VI-23.

In Section 2.f.3, it was computed that 59.8 employees per year in yarn spinning and weaving processes will be directly affected by a contraction of one million pounds in the annual consumption of cotton yarn. Futhermore, Part III of Appendix C shows that the cotton ginning sector had total employment of 34,144 and ginned 6577.9 million pounds of cotton in 1972, indicating that 5.2 employees per year in the ginning process will be affected by a contraction of one million pounds in the annual consumption of raw cotton. The above two figures indicate that approximately 65.0 employees will be affected in all three stages, namely, ginning, yarn spinning and yarn processing due to a contraction of annual raw cotton consumption of one million pounds.

EXHIBIT D

7) Effects on Market Structure (page VI-127)

The financial impact of cotton dust exposure limits, as measured by the ratio of compliance costs to profits after tax, is summarized in Table VI-39. The exposure limit of 0.1 mg/m^3 in SIC Code 2211 (Weaving Mills, Cotton) exhibits extremely high ratios, ranging from 21.0 for the largest firms to 32.9 for smaller firms, ignoring the four smallest size classes. These ratios suggest that it will be very difficult for weaving firms specializing in cotton to finance compliance capital costs imposed by the 0.1 mg/m^3 exposure limit. The impact of the 0.2 mg/m^3 limit upon SIC Code 2211 is also quite severe, with ratios ranging from 10.0 to 20.8. These ratios indicate that unless the compliance capital investments are spread over a substantial number of years, all the companies engaged heavily in cotton yarn spinning and weaving processes will face severe difficulty in financing compliance capital for both the 0.2 and 0.1 mg/m^3 exposure limits.

As shown in Tables VI-11 and VI-27, the ratios generally decline as company size increases, i.e., the ratios are larger for small size classes than for larger size classes. Also, the difference in the size of ratios between classes is quite pronounced, suggesting that the difficulty of financing the compliance capital costs will be more intense for smaller companies. Therefore, it is undeniable that the proposed cotton dust exposure limits of 0.2 and 0.1 mg/m^3 could impose some degree of limitation on market entry and increase concentration in the cotton yarn spinning and weaving sectors. However, the results in this analysis only point out the relative difficulties among size classes of companies and . . .

EXHIBIT E

562 . . . textile industry to come into compliance with the proposed standard cannot be made with certainty. A large number of firms are involved and each one will have special conditions constraining its action. Nevertheless, after consultation with textile firms and suppliers of control equipment and consideration of normal business practices and the experience of other industries, RTI suggested that compliance by the yarn producing sector with an exposure limit of 0.2 milligrams per cubic meter, it was estimated would take as much as eight or more years.

For other sectors of the cotton textile industry, RTI estimated that compliance at each exposure level could require two to three years more than for the yarn producers.

The primary basis for these estimates was the problems that the control industry may have in supplying the required equipment. Each installation will tend to be custom designed for that plant and at best there will be considerable time required to complete and test the installation.

For some equipment, also, entirely new designs will be needed and such new technological applications will not be available immediately, even though the general methods to be used are known.

Financing will also be a problem for many firms. RTI was not able to estimate the extent of this problem since the detailed financial information for each firm is not available.

EXHIBIT F

Conclusion (page 12)

From the perspective of small business, the proposed OSHA cotton dust regulations would generate administrative and financial problems. Most small businesses would lack the technical and capital resources required for compliance with the regulations.

In the preceding discussion, the scope of small business concerns has been indicated, but specific alternative recommendations have not been endorsed. To date, none of the alternatives outlined by OSHA are feasible for small companies. Alternatives such as restricting regulation to a specific sector of the cotton industry would still impose a substantial financial problem on small companies in that sector.

Moreover, regulation of a single sector will result in an adverse impact industry-wide. All other sectors would readjust their own operations to levels consistent with the lower-employment, lower-volume level of the regulated sector.

OSHA should include small business considerations in its policy analyses on cotton dust regulations. Without the inclusion of these considerations, the OSHA regulations adopted will protect workers from cotton dust exposure by shutting down the plants in which they are not employed.

EXHIBIT G

Conclusion (page 37)

The Council on Wage and Price Stability has carefully examined the *Inflation Impact Statement* and the record pertaining to costs and benefits in this hearing. We believe that the proposed standard could impose excessive costs upon the cotton processing industry unless the standard is carefully formulated to take into account cost-effectiveness considerations and the potential for including positive cost-reducing innovations.

We have criticized the IIS for not carefully taking into account the full implications of the proposed action or considering alternative regulatory approaches that have the potential to both reduce costs and increase benefits, perhaps at the cost to OSHA of a slightly more complicated and expensive enforcement effort. We urge OSHA to consider the full range of alternatives and to develop the information on costs and benefits necessary for rational and effective standards development.

We believe that an alternative approach with emphasis on a true performance standard coupled with a well defined fine structure based on the benefits of byssinosis might offer the necessary flexibility and incentives to reach our goal of assuring safe and healthful working conditions. This alternative approach would also have the advantage of reducing OSHA's need to do cost impact analysis. In any event either more cost-effective analysis or greater . . .